

US Serial No.: 10/755,524

**Remarks/Arguments**

Claims 1-4, 8-15 and 17-24 are pending. The specification is amended to correct a typographical error made upon conversion to this non-provisional application. Support for this amendment is found in the "as filed" provisional application, at page 5, line 16. Claims 1, 8, 11, 12, 15, 21 and 24 are amended as noted above. Support for these amendments is found in the application (and provisional application also for that matter) and claims as filed, and only the amendments to claims 1 and 15 are made to more particularly point out and define the subject invention to overcome cited art of record. No new matter is believed added by any of the amendments made here. Reconsideration and allowance of this application is requested in view of the amendments above and remarks below.

**Oath/Declaration**

The oath or declaration is not believed to be defective, because a signed and dated Declaration was submitted upon filing, and included therewith was an application data per 37 CFR 1.76. As evidence of these submissions, enclosed are copies of the filed papers along with a copy of the postcard showing receipt of the same by the Patent Office. Accordingly, this objection is respectfully requested to be withdrawn.

**Claim Rejections – 35 USC 112**

Claim 19 has been rejected under 35 USC 112, first paragraph. This rejection is respectfully traversed because Applicant asserts there is sufficient teaching in the specification, and supporting drawings, to enable the claim for one of ordinary skill in the art. Reference is made to the specification at page 5, lines 22-32, as well as a mark up of FIG 1 herewith. Identified as "A" in FIG. 1, there is seen the "the at least two orifices comprise at least four orifices". Then, identified as "B" in FIG. 1, there is seen the "one pair of orifices is located on opposite sides of one of the at least two openings and midway between opposite ends of the one opening". Finally, identified as "C" in FIG. 1, there is seen the "second pair of orifices is located on opposite sides of a different opening of the at least two openings and midway between a first end of the one opening

US Serial No.: 10/755,524

and a second end of the different opening". Accordingly, this rejection is respectfully requested to be withdrawn.

Claims 21-24 have been rejected under 35 USC 112, second paragraph. This rejection is respectfully traversed because Applicant asserts having such process claims depend from product claims is proper, as recognized in the MPEP, at Section 608.01(n), part III. Infringement Test, see attached. Accordingly, this rejection is respectfully requested to be withdrawn.

Claims 21 and 24 have also been rejected under 35 USC 112, second paragraph. This rejection is respectfully traversed because Applicant has amended the claims to have proper antecedent basis, and such amending does not in any way narrow the scope of these claims as filed. Accordingly, this rejection is respectfully requested to be withdrawn.

Claims 9-12 have been rejected under 35 USC 112, second paragraph. This rejection is respectfully traversed because Applicant has amended the claims to have proper antecedent basis, and such amending does not in any way narrow the scope of these claims as filed. Accordingly, this rejection is respectfully requested to be withdrawn.

#### Claim Rejection – 35 USC 102

Claims 1-14 has been rejected under 35 USC 102(b) as being anticipated by *Miller* (US 4,289,290). This rejection is traversed as moot, insofar as it even applies to the now presented claims. It is well established under the patent laws that there can be no anticipation unless (1) all the same elements are (2) found in exactly the same situation and (3) are united in the same way to (4) perform the identical function.

Particularly, neither *Miller*, alone or in combination with any of the patents of record (assuming such a combination is proper, which Applicant assert is not proper based on the teaching in *Miller* and the other art of record), teaches or suggests the now recited combination of features of Applicant's invention, which includes *inter alia*: a [a] rectangular plate; at least two openings in the plate, each opening wholly contained within the front and back faces so as to not intersect with the side edges, and the at least two openings comprise slots and [b] the slots have a length extending parallel to the

US Serial No.: 10/755,524

length direction of the plate and [c] the slots are each located on a center axis of the plate relative to the length direction of the plate; and, at least one pair of orifices in the plate, the pair of orifices located adjacent opposite side edges of the plate along the length of the plate so as to form a weakened zone widthwise for bending the plate along the weakened zone.

For at least the features [a], [b] and [c] noted above, *Miller* lacks such elements, and in fact, based on the teachings of Miller, one of ordinary skill in the art would not be properly motivated to modify *Miller* to obtain Applicant's now recited invention. *Miller* is not a rectangular plate, as it requires all parts 24a-24e plus back panel 26 in order to achieve its desired functions. Rather, *Miller* is a T-shaped plate, which is much different than Applicant's invention. In this regard then, the length direction of the plate in *Miller* runs parallel to panel 26. Only slots 36a in the center of member 24 are slots and oriented in a length direction of the *Miller* plate. These slots do not intersect the axis which is parallel to panel 26. Holes 36b intersect the axis, but they are holes and not slots. Still further, not only does *Miller* lack at least these feature, but insofar as *Miller* does include slots and orifices, they are united in a different way and they achieve a much different bracket structure. Accordingly, for at least these reasons *Miller* cannot (and does not) anticipate Applicant's recited invention. Thus, the rejection of claim 1, as well as dependent claims 2-14 for at least the same reasons, based upon *Miller* is respectfully requested to be withdrawn.

For clarification, it is noted that the amendment to the independent claims to recite "the slots are each located on a center axis of the plate relative to the length direction of the plate" (emphasis added) means that a portion of the slots intersect a portion of the center axis, e.g., axis line 38-38 in FIG. 5. As such, these so located slots could be perfectly aligned along the line 38-38 as seen in FIG. 5, or askew left or right of line 38-38 (not specifically shown) as long as a portion of the slots intersects the center axis. In a similar regard, Applicant asserts that the definition of intersect noted in the Office Action at page 5, "(intersect by definition 'meaning sharing a common area')" is not within the scope of the teaching of the subject invention per the specification and drawings. Rather, as used in the specification, drawings and claims, for an orifice, opening or edge to intersect, they must do more than simply share a "common area", such

US Serial No.: 10/755,524

as 24a or 24b in FIG. 1 of *Miller*, they must run into each other so as to share a common edge, boundary or circumference. If “intersect” as used in the application was so broad as to simply mean “sharing a common area” then all of the openings, orifices and sides of the invention intersect each other because they are all located in the same front (and back) face of the plate 20. Clearly, this is not what Applicant intends nor how one of ordinary skill in the art would understand Applicant’s use of “intersect” in the application.

Further in this regard then, the features recited in claims 9 and 11 relating to intersecting notches, side edges and openings are clearly absent from *Miller*. For at least these additional reasons *Miller* cannot (and does not) anticipate Applicant’s recited invention in claims 9 and 11.

Additionally, claim 14 (as better now understood based on the above discussion under 35 USC 112) recites a combination of orientations for the orifices and openings that is clearly absent from *Miller*. For at least these additional reasons *Miller* cannot (and does not) anticipate Applicant’s recited invention in claim 14.

#### Claim Rejection – 35 USC 103

Claims 15-24 has been rejected under 35 USC 103(a) as being obvious over *Miller* (US 4,289,290) in view of *Olson* (US 2,638,643). This rejection is **traversed** as moot, insofar as it even applies to the now presented claims.

Based on the pending rejections in the Office Action, the Patent Office recognizes that *Miller* alone cannot anticipate or render obvious Applicant’s invention recited in claims 15-24 before the present amendments. With the present amendments, this is even more so the case now, and also in light of the above discussion regarding *Miller*. *Olson*, does not compensate for the deficiencies noted above in *Miller*, even assuming that *Miller* and *Olson* can be combined as suggest, which Applicant asserts is not a proper combination. As now recited, Applicant’s invention is a rectangular plate, and this orientation further dictates how its openings (slots) and orifices are particularly located and oriented, and for the openings they are on a center axis of the plate relative to the length direction of the plate, all which is much different than anything taught in *Miller* or *Olson*, for similar reasons noted in the detailed discussion for *Miller* above.

US Serial No.: 10/755,524

Moreover, to modify the structure of *Miller* to include the slots of *Olson* would be contrary to the teachings in *Miller* which has all of its orifices wholly contained within the circumference of the *Miller* plate and not intersecting the side edges. Such a proposed combination of features by chance thrown together from these two references is not supported by any proper teaching, suggestion or incentive in the record, and rather is only possible with impermissible hindsight reconstruction using Applicant's application as a template for doing so. Further, to make such a combination and so modify *Miller* would not likely be met with a reasonable likelihood of success, absent a complete redesign of *Miller* and significant experimentation and analysis to determine if the so modified structure can still perform its desired functions.

In summary, *Miller* and *Olson* cannot be properly combined to render obvious Applicant's presently recited invention, and even if so combined, the combination still fails to teach or suggest features of Applicant's presently recited invention. Accordingly, for at least these reasons the rejection of claim 15, as well as dependent claims 16-24 for at least the same reasons, based upon *Miller* in view of *Olson* is respectfully requested to be withdrawn.

Additionally, claim 19 (as better now understood based on the above discussion under 35 USC 112) recites a combination of orientations for the orifices and openings that is clearly absent from *Miller* and *Olson*. For at least these additional reasons neither *Miller* nor *Olson*, nor or their improper combination, can (or do) render obvious Applicant's recited invention in claim 19.

Still further, claims 21-24 recite features that are absent from *Miller* and *Olson*, and such would be contrary their teachings. For at least these additional reasons neither *Miller* nor *Olson*, nor or their improper combination, can (or do) render obvious Applicant's recited invention in claims 21-24.

In conclusion, Applicant respectfully submits that the objections and rejections to the application have been accommodated, traversed and/or rendered moot. Accordingly, the application is believed to be in condition for allowance and such action is requested in due course.

If there are any questions or a need for clarification on a point, the Examiner is


US Serial No.: 10/755,524

invited to contact the undersigned by telephone or other convenient means to try and quickly resolve the same.

Respectfully submitted,

JOHN F. BENTLY

Dated: January 8, 2005

By:   
Michael J. Bengel  
Attorney for Applicant

402 East Carrington Lane  
Appleton, WI 54913  
920-731-4131  
~~920-731-4154 (fax)~~